

HOUSE BILL 246

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

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AN ACT

RELATING TO LICENSING; GRANTING LIMITED LICENSES AND PERMITS TO
PRACTICE POLYSOMNOGRAPHY AND POLYSOMNOGRAPHY-RELATED
RESPIRATORY CARE; CHANGING BOARD MEMBERSHIP; PROVIDING CERTAIN
WAIVERS; AMENDING SECTIONS OF THE RESPIRATORY CARE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-12B-3 NMSA 1978 (being Laws 1984,
Chapter 103, Section 3, as amended) is amended to read:

"61-12B-3. DEFINITIONS.--As used in the Respiratory Care
Act:

A. "board" means the advisory board of respiratory
care practitioners;

B. "department" means the regulation and licensing
department or that division of the department designated to
administer the provisions of the Respiratory Care Act;

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1 C. "respiratory care" means a health care
2 profession, under medical direction, employed in the therapy,
3 management, rehabilitation, diagnostic evaluation and care of
4 patients with deficiencies and abnormalities that affect the
5 cardiopulmonary system and associated aspects of other system
6 functions, and the terms "respiratory therapy" and "inhalation
7 therapy" where such terms mean respiratory care;

8 D. "practice of respiratory care" includes:

9 (1) direct and indirect cardiopulmonary care
10 services that are of comfort, safe, aseptic, preventative and
11 restorative to the patient;

12 (2) cardiopulmonary care services, including
13 the administration of pharmacological, diagnostic and
14 therapeutic agents related to cardiopulmonary care necessary to
15 implement treatment, disease prevention, cardiopulmonary
16 rehabilitation or a diagnostic regimen, including paramedical
17 therapy and baromedical therapy;

18 (3) specific diagnostic and testing techniques
19 employed in the medical management of patients to assist in
20 diagnosis, monitoring, treatment and research of
21 cardiopulmonary abnormalities, including pulmonary function
22 testing, hemodynamic and physiologic monitoring of cardiac
23 function and collection of arterial and venous blood for
24 analysis;

25 (4) observation, assessment and monitoring of

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1 signs and symptoms, general behavior, general physical response
2 to cardiopulmonary care treatment and diagnostic testing,
3 including determination of whether such signs, symptoms,
4 reactions, behavior or general response exhibit abnormal
5 characteristics;

6 (5) implementation based on observed
7 abnormalities, appropriate reporting, referral, respiratory
8 care protocols or changes in treatment, pursuant to a
9 prescription by a physician authorized to practice medicine or
10 other person authorized by law to prescribe, or the initiation
11 of emergency procedures or as otherwise permitted in the
12 Respiratory Care Act;

13 (6) establishing and maintaining the natural
14 airways, insertion and maintenance of artificial airways,
15 bronchopulmonary hygiene and cardiopulmonary resuscitation,
16 along with cardiac and ventilatory life support assessment and
17 evaluation; and

18 (7) the practice performed in a clinic,
19 hospital, skilled nursing facility, private dwelling or other
20 place deemed appropriate or necessary by the department;

21 E. "expanded practice" means the practice of
22 respiratory care by a respiratory care practitioner who has
23 been prepared through a formal training program to function
24 beyond the scope of practice of respiratory care as defined by
25 rule of the department;

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1 F. "polysomnographic technician" means a person who
2 has successfully completed a formal polysomnography training
3 program associated with a state-licensed or nationally
4 accredited educational facility or has successfully completed a
5 minimum of four hundred eighty hours of experience as a
6 polysomnographic trainee with documented proficiency in
7 polysomnography-related respiratory care procedures and who has
8 a limited permit issued by the department;

9 G. "polysomnographic technologist" means a person
10 who has successfully completed the certification examination
11 administered by the board of registered polysomnographic
12 technologists and who has a limited license issued by the
13 department;

14 H. "polysomnographic trainee" means a person who
15 has provided written documentation that either a
16 polysomnographic technologist or a New Mexico licensed
17 physician will directly supervise that person's performance of
18 basic polysomnographic-related procedures and who has a limited
19 permit issued by the department. In this subsection, "directly
20 supervise" means the person supervising the trainee will be on
21 the premises where polysomnographic-related respiratory care is
22 being provided and shall be immediately available for
23 consultation with the trainee;

24 I. "polysomnography" means the process of
25 analyzing, monitoring and recording physiologic data during

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1 sleep and wakefulness to assist in the assessment and diagnosis
2 of sleep-wake disorders and other disorders, syndromes and
3 dysfunctions that are sleep-related, that manifest during sleep
4 or that disrupt normal sleep-wake cycles and activities;

5 J. "polysomnography-related respiratory care
6 services" means the limited practice of respiratory care in the
7 provision of polysomnographic services, under the supervision
8 of a New Mexico licensed physician at a sleep disorders center
9 or laboratory, by a polysomnographic technologist, a
10 polysomnographic technician or a respiratory care practitioner.

11 "Polysomnography-related respiratory care services" are limited
12 to the therapeutic and diagnostic use of oxygen, noninvasive
13 ventilatory assistance of patients who spontaneously breathe
14 when awake, the application and monitoring of pulse oximetry
15 and capnography and the education of patients about using and
16 complying with the preceding procedures, as ordered by a New
17 Mexico licensed physician or by written procedures and
18 protocols of the associated sleep disorders center or
19 laboratory as approved by a New Mexico licensed physician and
20 that do not violate regulations adopted by the department in
21 consultation with the board;

22 [~~F.~~] K. "respiratory care practitioner" means a
23 person who is licensed to practice respiratory care in New
24 Mexico;

25 [~~G.~~] L. "respiratory care protocols" means a

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1 predetermined, written medical care plan, which can include
2 standing orders;

3 [H.] M. "respiratory therapy training program"
4 means an education course of study as defined by rule of the
5 department; and

6 [F.] N. "superintendent" means the superintendent
7 of regulation and licensing."

8 Section 2. Section 61-12B-4 NMSA 1978 (being Laws 1984,
9 Chapter 103, Section 4, as amended) is amended to read:

10 "61-12B-4. LICENSE REQUIRED--EXCEPTIONS.--

11 A. No person shall practice respiratory care or
12 [~~represent himself to be~~] make any representation as being a
13 respiratory care practitioner unless [~~he~~] that person is
14 licensed pursuant to the provisions of the Respiratory Care
15 Act, except as otherwise provided by that act.

16 B. A respiratory care practitioner may transcribe
17 and implement the written or verbal orders of a physician or
18 other person authorized by law to prescribe pertaining to the
19 practice of respiratory care and respiratory care protocols.

20 C. Nothing in the Respiratory Care Act is intended
21 to limit, preclude or otherwise interfere with:

22 (1) the practices of other persons and health
23 providers licensed by appropriate agencies of New Mexico;

24 (2) self-care by a patient;

25 (3) gratuitous care by a friend or family

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1 member who does not [~~represent or hold himself out~~] make any
2 representation as being or claim to be a respiratory care
3 practitioner; or

4 (4) respiratory care services rendered in case
5 of an emergency.

6 D. An individual who has demonstrated competency in
7 one or more areas covered by the Respiratory Care Act may
8 perform those functions that [~~he~~] the individual is qualified
9 by examination to perform; provided that the examining body or
10 testing entity is recognized nationally for expertise in
11 evaluating the competency of persons performing those functions
12 covered by that act or department rules. The department shall
13 establish by rule those certifying agencies and testing
14 entities that are acceptable to the department.

15 E. The Respiratory Care Act does not prohibit
16 qualified clinical laboratory personnel who work in facilities
17 licensed pursuant to the provisions of the federal Clinical
18 Laboratories Improvement Act of 1967, as amended, or accredited
19 by the college of American pathologists or the joint commission
20 on accreditation of healthcare organizations from performing
21 recognized functions and duties of medical laboratory personnel
22 for which they are appropriately trained and certified.

23 F. Only respiratory care practitioners,
24 polysomnographic technologists, polysomnographic technicians or
25 polysomnographic trainees may provide polysomnography-related

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1 respiratory care services."

2 Section 3. Section 61-12B-5 NMSA 1978 (being Laws 1984,
3 Chapter 103, Section 5, as amended) is amended to read:

4 "61-12B-5. ADVISORY BOARD CREATED.--

5 A. The superintendent shall appoint an "advisory
6 board of respiratory care practitioners" consisting of [~~five~~]
7 six members as follows:

8 (1) one physician licensed in New Mexico who
9 is knowledgeable in respiratory care;

10 (2) two respiratory care practitioners who are
11 residents of New Mexico, licensed by the department and in good
12 standing. At least one of the respiratory care practitioners
13 shall have been actively engaged in the practice of respiratory
14 care for at least five years immediately preceding appointment
15 or reappointment; [~~and~~]

16 (3) two public members who are residents of
17 New Mexico. A public member shall not have been licensed as a
18 respiratory care practitioner nor shall [~~he~~] the public member
19 have any financial interest, direct or indirect, in the
20 occupation to be regulated; and

21 (4) one polysomnographic technologist
22 registered by the board of registered polysomnographic
23 technologists who holds a valid limited license issued by the
24 department that is in good standing, is a resident of New
25 Mexico and has been actively engaged in the practice of

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1 polysomnography for at least the five-year period immediately
2 preceding appointment or reappointment to the board.

3 B. The board shall be administratively attached to
4 the department.

5 C. A member shall serve no more than two
6 consecutive three-year terms.

7 D. A member of the board shall receive per diem and
8 mileage as provided for nonsalaried public officers in the Per
9 Diem and Mileage Act and shall receive no other compensation,
10 perquisite or allowance in connection with the discharge of
11 [his] duties as a board member.

12 E. A member failing to attend three consecutive
13 regular and properly noticed meetings of the board without a
14 reasonable excuse shall be automatically removed from the
15 board.

16 F. In the event of a vacancy, the board shall
17 immediately notify the superintendent of the vacancy. Within
18 ninety days of receiving notice of a vacancy, the
19 superintendent shall appoint a qualified person to fill the
20 remainder of the unexpired term.

21 G. A majority of the board members currently
22 serving constitutes a quorum of the board.

23 H. The board shall meet at least twice a year and
24 at such other times as it deems necessary.

25 I. The board shall annually elect officers as

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1 deemed necessary to administer its duties."

2 Section 4. Section 61-12B-6 NMSA 1978 (being Laws 1984,
3 Chapter 103, Section 6, as amended) is amended to read:

4 "61-12B-6. DEPARTMENT--DUTIES AND POWERS.--

5 A. The department, in consultation with the board,
6 shall:

7 (1) evaluate the qualifications of applicants
8 and review the required examination results of applicants. The
9 department may recognize the entry level examination written by
10 the national board for respiratory care or a successor board;

11 (2) promulgate rules as may be necessary to
12 implement the provisions of the Respiratory Care Act;

13 (3) issue and renew licenses and temporary
14 permits to qualified applicants who meet the requirements of
15 the Respiratory Care Act; and

16 (4) administer, coordinate and enforce the
17 provisions of the Respiratory Care Act and investigate persons
18 engaging in practices that may violate the provisions of that
19 act.

20 B. The department, in consultation with the board,
21 may:

22 (1) conduct examinations of respiratory care
23 practitioner applicants as required by rules of the department;

24 (2) reprimand, fine, deny, suspend or revoke a
25 license or temporary permit to practice respiratory care as

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1 provided in the Respiratory Care Act in accordance with the
2 provisions of the Uniform Licensing Act;

3 (3) for the purpose of investigating
4 complaints against applicants and licensees, issue
5 investigative subpoenas prior to the issuance of a notice of
6 contemplated action as set forth in the Uniform Licensing Act;

7 (4) enforce and administer the provisions of
8 the Impaired Health Care Provider Act and promulgate rules
9 pursuant to that act;

10 (5) promulgate rules or disciplinary
11 guidelines relating to impaired practitioners;

12 (6) promulgate rules to allow the interstate
13 transport of patients; ~~and~~

14 (7) promulgate rules to determine and regulate
15 the scope and qualifications for expanded practice for
16 ~~[respiratory care practitioners]~~ licensees or permittees; and

17 (8) promulgate rules to issue and renew
18 limited licenses to polysomnographic technologists and limited
19 permits to polysomnographic technicians and polysomnographic
20 trainees to provide polysomnography-related respiratory care
21 services."

22 Section 5. Section 61-12B-7 NMSA 1978 (being Laws 1984,
23 Chapter 103, Section 7, as amended) is amended to read:

24 "61-12B-7. LICENSING BY TRAINING AND EXAMINATION.--A
25 person desiring to become licensed as a respiratory care

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1 practitioner or desiring to receive a limited license to
2 provide polysomnography-related respiratory care services shall
3 make application to the department on a written form and in
4 such manner as the department prescribes, pay all required
5 application fees and certify and furnish evidence to the
6 department that the applicant:

7 A. has successfully completed a training program as
8 defined in the Respiratory Care Act and set forth by rules of
9 the department;

10 B. has passed an entry level examination [~~as~~
11 ~~specified by rules of the department~~] for respiratory care
12 practitioners administered by the national board for
13 respiratory care or [~~a~~] its successor board or an entry level
14 examination for polysomnographic technologists or
15 polysomnographic technicians administered by the board for
16 registered polysomnographic technologists or its successor
17 board;

18 C. is of good moral character; and

19 D. has successfully completed other training or
20 education programs and passed other examinations as set forth
21 by rules of the department."

22 Section 6. Section 61-12B-8 NMSA 1978 (being Laws 1984,
23 Chapter 103, Section 8, as amended) is amended to read:

24 "61-12B-8. LICENSING WITHOUT TRAINING AND EXAMINATION.--

25 A. The department shall waive the education and

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1 examination requirements for an applicant for a respiratory
2 care practitioner license who presents proof that [~~he~~] the
3 applicant is currently licensed in good standing in a
4 jurisdiction that has standards for licensure that are at least
5 equal to those for licensure in New Mexico as required by the
6 Respiratory Care Act.

7 B. The department shall waive the education and
8 examination requirements for an applicant for a limited license
9 to provide polysomnography-related respiratory care services
10 who presents proof that the applicant is currently licensed,
11 registered or holds a permit in good standing in a jurisdiction
12 that has standards for licensure, registration or permits that
13 are at least equal to those in New Mexico as required by the
14 Respiratory Care Act."

15 Section 7. Section 61-12B-9 NMSA 1978 (being Laws 1984,
16 Chapter 103, Section 9, as amended) is amended to read:

17 "61-12B-9. OTHER LICENSING PROVISIONS.--

18 A. The department, in consultation with the board,
19 shall adopt rules for mandatory continuing education
20 requirements that shall be completed as a condition for renewal
21 of a license or permit issued pursuant to the provisions of the
22 Respiratory Care Act.

23 B. The department, in consultation with the board,
24 may adopt rules for issuance of temporary permits to students
25 and graduates of approved training programs to practice limited

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1 respiratory care under the direct supervision of a licensed
2 respiratory care practitioner or physician. Rules shall be
3 adopted defining the terms "student" and "direct supervision".

4 C. A license issued by the department shall
5 describe the licensed person as a "respiratory care
6 practitioner licensed by the New Mexico regulation and
7 licensing department".

8 D. Unless licensed as a respiratory care
9 practitioner pursuant to the provisions of the Respiratory Care
10 Act, no person shall use the title "respiratory care
11 practitioner", the abbreviation "R.C.P." or any other title or
12 abbreviation to indicate that the person is a licensed
13 respiratory care practitioner.

14 E. A copy of a valid license, permit or temporary
15 permit to practice respiratory care or a limited license or
16 limited permit to practice polysomnography-related respiratory
17 care services issued pursuant to the Respiratory Care Act shall
18 be kept on file at the [~~respiratory care practitioner's or~~
19 ~~temporary~~] licensee or permittee's place of employment.

20 F. [~~A respiratory care practitioner license~~]
21 Licenses issued by the department shall expire on September 30,
22 annually or biennially, as provided by rules of the department.

23 G. Polysomnographic technologists who have been
24 issued a limited license by the department to perform
25 polysomnography-related respiratory care services pursuant to

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1 the provisions of the Respiratory Care Act may use the title
2 "licensed PSGT" or "licensed polysomnographic technologist" or
3 the abbreviation "LPSGT".

4 H. Polysomnographic technicians who have been
5 issued a limited permit by the department to perform
6 polysomnography-related respiratory care services pursuant to
7 the provisions of the Respiratory Care Act may use the title
8 "PSG technician permittee".

9 I. Polysomnographic trainees who have been issued a
10 limited permit by the department to perform polysomnography-
11 related respiratory care services pursuant to the provisions of
12 the Respiratory Care Act may use the title "PSG trainee
13 permittee".

14 Section 8. Section 61-12B-11 NMSA 1978 (being Laws 1984,
15 Chapter 103, Section 11, as amended) is amended to read:

16 "61-12B-11. FEES.--

17 A. The superintendent, in consultation with the
18 board, shall by rule establish a schedule of reasonable fees
19 for licenses, ~~[temporary]~~ permits and renewal of licenses ~~[for~~
20 ~~respiratory care practitioners]~~ and permits.

21 B. The initial application fee shall be set in an
22 amount not to exceed one hundred fifty dollars (\$150).

23 C. ~~[A license renewal fee]~~ Renewal fees for
24 licenses and permits shall be established in an amount not to
25 exceed one hundred fifty dollars (\$150)."

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1 Section 9. Section 61-12B-12 NMSA 1978 (being Laws 1984,
2 Chapter 103, Section 12, as amended) is amended to read:

3 "61-12B-12. DENIAL, SUSPENSION, REVOCATION AND
4 REINSTATEMENT OF LICENSES AND PERMITS.--

5 A. The superintendent in consultation with the
6 board and in accordance with the rules set forth by the
7 department and the procedures set forth in the Uniform
8 Licensing Act may take disciplinary action against a license or
9 [~~temporary~~] permit held or applied for pursuant to the
10 Respiratory Care Act for the following causes:

11 (1) fraud or deceit in the procurement of or
12 attempt to procure a license or [~~temporary~~] permit;

13 (2) imposition of any disciplinary action for
14 an act that would be grounds for disciplinary action by the
15 department pursuant to the Respiratory Care Act or as set forth
16 by rules of the department upon a person by an agency of
17 another jurisdiction that regulates respiratory care;

18 (3) conviction of a crime that substantially
19 relates to the qualifications, functions or duties of a
20 respiratory care practitioner or the duties of a
21 polysomnographic technologist, polysomnographic technician or
22 polysomnographic trainee in the provision of polysomnography-
23 related respiratory care services. The record of conviction or
24 a certified copy thereof shall be conclusive evidence of the
25 conviction;

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1 (4) impersonating or acting as a proxy for an
2 applicant in an examination given pursuant to provisions of the
3 Respiratory Care Act;

4 (5) habitual or excessive use of intoxicants
5 or drugs;

6 (6) gross negligence as defined by rules of
7 the department in the practice of respiratory care or in the
8 provision of polysomnography-related respiratory care services;

9 (7) violating a provision of the Respiratory
10 Care Act or a rule duly adopted pursuant to that act or aiding
11 or abetting a person to violate a provision of or a rule
12 adopted pursuant to that act;

13 (8) engaging in unprofessional conduct as
14 defined by rules set forth by the department;

15 (9) committing a fraudulent, dishonest or
16 corrupt act that is substantially related to the
17 qualifications, functions or duties of a respiratory care
18 practitioner or of a polysomnographic technologist,
19 polysomnographic technician or polysomnographic trainee in the
20 provision of polysomnography-related respiratory care services;

21 (10) practicing respiratory care without a
22 valid license or [~~temporary~~] permit;

23 (11) aiding or abetting the practice of
24 respiratory care by a person who is not licensed or who has not
25 been issued a [~~temporary~~] permit by the department;

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1 (12) conviction of a felony. The record of
2 conviction or a certified copy thereof shall be conclusive
3 evidence of the conviction;

4 (13) violating a provision of the Controlled
5 Substances Act;

6 (14) failing to furnish the department or its
7 investigators or representatives with information requested by
8 the department in the course of an official investigation;

9 (15) practicing beyond the scope of
10 respiratory care as defined in the Respiratory Care Act or as
11 set forth by rules of the department; or

12 (16) surrendering a license, certificate or
13 permit to practice respiratory care or a license, certificate
14 or permit to provide polysomnography-related respiratory care
15 services in another jurisdiction while an investigation or
16 disciplinary proceeding is pending for an act or conduct that
17 would constitute grounds for disciplinary action under the
18 Respiratory Care Act.

19 B. The department, in consultation with the board,
20 may impose conditions on and promulgate rules relating to the
21 reapplication or reinstatement of applicants, licensees or
22 [~~temporary~~] permittees who have been subject to disciplinary
23 action by the department."